

JAN 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZAKARIAH LAFRENIERE,

Plaintiff - Appellant,

v.

CONGRESS OF THE UNITED STATES  
OF AMERICA,

Defendant - Appellee.

No. 05-16955

D.C. No. CV-05-01368-JSW

MEMORANDUM \*

Appeal from the United States District Court  
for the Northern District of California  
Jeffrey S. White, District Judge, Presiding

Submitted December 17, 2008\*\*

Before: WALLACE, TROTT, and RYMER, Circuit Judges.

Zakariah LaFreniere appeals pro se from the district court's order dismissing  
without leave to amend his action alleging that the United States Congress violated

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. See Fed. R. App. P. 34(a)(2).

the False Claims Act by failing to rescind the Eleventh Amendment *sua sponte* because it is preempted by Article III of the Constitution. We have jurisdiction under 28 U.S.C. § 1291. We review a district court's dismissal for lack of subject matter jurisdiction and standing de novo. *Rattlesnake Coal. v. EPA*, 509 F.3d 1095, 1100 (9th Cir. 2007). We affirm.

The district court properly concluded that LaFreniere lacks standing under the False Claims Act, 31 U.S.C. § 3730(b)(1), because LaFreniere has not alleged that the United States suffered an injury in fact. *See Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 773-74 (2000) (holding that standing of a qui tam plaintiff under the False Claims Act requires an injury to the United States ).

The district court also properly dismissed LaFreniere's claims on alternative grounds.

Since LeFreniere does not have standing, amendment of the complaint would be futile. *See United States ex rel. Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1052 (9th Cir. 2001).

We deny LaFreniere's motion for summary certification of this appeal to the Supreme Court.

**AFFIRMED.**